APPEAL NO. 93381

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On April 16, 1993, a hearing upon remand was held in (city) Texas, with (hearing officer) presiding, as was called for by Texas Workers' Compensation Commission Appeal No. 93098, dated March 24, 1993. He determined that respondent (claimant) has a 21% impairment rating based on his injury of (date of injury). Appellant (carrier) asserts that the hearing officer erred in describing the issues in his "Statement of Case," that the hearing officer should not have considered an "additional issue" of whether a designated doctor must personally review certain tests conducted as opposed to weighing the reports of those tests made by other medical specialists, and that the designated doctor should have responded to its inquiry about the evaluation of the claimant. Respondent (claimant) did not reply to the appeal of the decision after remand.

DECISION

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm.

Claimant injured his back while lifting a heavy object at work. The issue at the first hearing, held on December 10, 1992, was to determine claimant's correct impairment rating.

Claimant introduced evidence from his doctor of chiropractic, Dr. H, which was bolstered by the statement of a medical doctor, Dr. T that his impairment rating was 50%. Carrier offered evidence from its doctor, Dr. W) that the impairment was 9%. The designated doctor, (Dr. We), after a series of letters and reports, indicated that the impairment was 21%. The hearing officer concluded after the first hearing that the great weight of medical evidence was not contrary to the opinion of the designated doctor and found that the impairment rating was 21%. (*See* Article 8308-4.26(d) and Appeal No. 93098, *supra*)

Carrier appealed the decision after the first hearing stating that the hearing officer had left the record open for a period of time for submissions; carrier had made a submission but the hearing officer did not consider it before writing his decision. Appeal No. 93098 remanded the case, asking that the hearing officer determine the date carrier's submission was received and, if timely, to consider it and issue a new opinion.

At the hearing on remand, the hearing officer accepted into evidence, as carrier exhibit H, the submission carrier had previously offered during the time the record was open. By that exhibit the carrier objected to the hearing officer's statement that the designated doctor did not have to personally interpret a CT scan which was interpreted by a radiologist--the designated doctor was not a radiologist. The carrier in that exhibit also asserted its contention that the designated doctor should make explanatory reports when requested and cited Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(f) (Rule 130.1(f)). That rule reads as follows:

(f)A doctor required to submit a report under this chapter shall submit supplementary and explanatory reports and information as requested by the commission or the carrier.

Thereafter Rule 130.1(h) reads:

(h)A report required under this rule shall be filed with the commission, employee, and insurance carrier no later than seven days after examination.

Finally, the carrier in that exhibit pointed out that a part of the impairment rating of the designated doctor was based on a preexisting condition.

The hearing officer in his decision on remand found that the opinion of the designated doctor was entitled to the presumption specified in Article 8308-4.26 (d) since the great weight of other medical evidence was not to the contrary; he determined that the claimant had 21% impairment. In the "Discussion" the hearing officer provided in his opinion, he stated that there is no requirement that a designated doctor "personally review a CT film" and cited TWCC advisory 93-04. That advisory says in part:

This means the doctor must evaluate the complete clinical and non-clinical history of the medical condition(s), perform an examination of the injured worker, analyze the medical history with the clinical and laboratory findings, and assess and certify an impairment rating according to the Act, Commission rules, and the "Guides".

Texas Workers' Compensation Commission Appeal No. 93095, dated March 19, 1993, quoted from the same TWCC advisory and stated, "a designated doctor can appropriately consider and rely on tests, exams, data, medical reports, etc. performed by others in arriving at his final evaluation in a given case." Similarly, in Texas Workers' Compensation Commission Appeal No. 92627, dated January 7, 1993, the Appeals Panel stated in referring to a designated doctor consulting other medical practitioners, "as with medical reports and the findings of previous examinations by other doctors, the designated doctor must evaluate the findings and recommendations of other experts in developing a recommendation that is ultimately based upon his own professional opinion;" Appeal No. 93095, *supra*, remanded the case under consideration to determine whether the doctor examined the claimant. It cited Article 8308-4.25 and 4.26 of the 1989 Act which state, in part, "the employee to be examined by a designated doctor".

The hearing officer also cited Rule 130.1(f) and stated in his "Discussion" that the designated doctor did respond to the request of the carrier by issuing a new report. The hearing officer further stated that the question raised by the carrier as to misinterpretation of a test was impliedly answered by the designated doctor in the negative. In Texas Workers' Compensation Commission Appeal No. 92511, dated November 12, 1992, the Appeals

Panel observed that Rule 130.1 does not provide for invalidation of a doctor's report based on late filing (*See* Rule 130.1(h)). Rule 130.1(f) also has no provision for invalidating. Similarly Article 8308-10.07(c)(3) provides administrative penalties for wilful or intentional failure to timely file reports.

The hearing officer also addressed the carrier's contention that a preexisting condition should not be made part of a total body impairment rating that is based upon the compensable injury. The hearing officer indicated the carrier could obtain another opinion if it did not agree with the analysis of a particular test.

In its appeal of the decision on remand, the carrier focuses on the question of responsiveness by the doctor to its requests for added explanation of an earlier stated opinion. The carrier states that the designated doctor did not respond, thereby denying it due process. The hearing officer has addressed this point by stating that the designated doctor did respond to the request of the carrier by making a new report. Carrier's exhibit E supports the view of the hearing officer on this point. It shows that the carrier by letter dated November 20, 1992, asked if problems in the testing were identified and whether films were misinterpreted, summing up by asking if the designated doctor would change his impairment rating. The designated doctor replied on December 7, 1992 to the carrier, citing the carrier's letter of November 20th. The designated doctor stated that he consulted another doctor about the 1990 AMA Guides and referred to the problem presented by spondylolisthesis. He concluded that the rating should be 14%, not 21% as he had previously stated. We agree that the designated doctor's letter of December 7, 1992, responds to the request for information made by the carrier. The hearing officer was sufficiently supported by the evidence in stating that the designated doctor replied to the inquiry. Even if the designated doctor were not timely in reporting, the report would not be invalidated. *See* Appeal No. 92511, *supra*. (We note that the designated doctor later restated his impairment rating at 21% when his earlier erroneous use of the 1990 AMA Guides, rather than the correct 1989 AMA Guides, was called to his attention.)

The carrier in its appeal to the decision on remand also asserts that the hearing officer exceeded his authority in "advising the doctor of his opinion on whether or not the doctor need reply." The carrier states that the doctor should decide whether to review films himself, etc. (contrary to its position taken in carrier exhibit H). We agree with the carrier that generally the designated doctor should decide whether and when to interpret tests himself as opposed to relying on the interpretation of those tests by others. If the designated doctor were required to always interpret tests of a claimant rather than rely on the interpretation of other medical personnel, then tests such as blood samples interpreted microscopically in possibly distant laboratories in issues of occupational disease could pose a formidable challenge to a designated doctor to interpret in order to fulfill his responsibility. We disagree with any implication in carrier's assertion that the hearing officer advised the designated doctor prior to that physician making a decision. The hearing officer in his letter to the designated doctor dated December 11, 1992 said:

In our conversation you stated that you did not review the CT film that was read and

> interpreted by Dr. M since he is a radiologist and you are not. I agree that it is reasonable for a designated doctor to rely on the reports of specialists and, with regard to a CT interpretation, that it is reasonable not to substitute the opinion of a radiologist with the opinion of an orthopedic surgeon.

The designated doctor is appointed by the commission and that doctor reports to the commission. *See* Article 8308-4.25 and 4.26 of the 1989 Act. In Texas Workers' Compensation Commission Appeal No. 92617, dated January 14, 1993, the Appeals Panel approved the hearing officer's decision to obtain another report from the designated doctor, noting the hearing officer's duty under Article 8308-6.34(b) of the 1989 Act to fully develop the evidence. The hearing officer did not go beyond the scope of his authority in agreeing with the designated doctor as to his method of evaluation, especially since that method of evaluation is consistent with Appeal No. 93095, *supra*, and TWCC advisory 93-04.

The carrier's objection on appeal to the hearing officer creating an additional issue as to whether a designated doctor should personally interpret tests done by others is without merit. The carrier in its exhibit H stresses its contention, which it said was raised at the hearing, that the designated doctor must review "actual films" himself or see that another doctor in the specialty concerned reviews the films in question. The hearing officer was not remiss in addressing this point by saying that this designated doctor was not required to interpret CT film that was reviewed by a radiologist. The contention of the carrier that it was denied due process is also without merit. The designated doctor responded to the carrier's inquiry consistent with Rule 130.1(f). The hearing officer's opinion states that the designated doctor responded and this panel found sufficient evidence to support that opinion. The carrier may not have received the reply it wished to receive, but the degree of responsiveness would be a matter for the hearing officer to weigh in considering the designated doctor's opinion as a whole, not a matter that would invalidate that doctor's opinion as to MMI or impairment rating. (*See* Appeal No. 92511, *supra*).

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge